A

0
0
0
6
8
4
3
6
5
0

IN SOUTHERN REGIONAL ARCHIVES
UNIVERSITY OF MICHIGAN LIBRARY

UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

5274
ANALYTICAL TABLES

OF THE

LAW OF EVIDENCE

FOR USE WITH

STEPHEN'S DIGEST OF THE LAW OF EVIDENCE

BY

GEORGE M. DALLAS, LL.D.,

AND

HENRY WOLF BIKLÉ, A.M., LL.B.

PHILADELPHIA:

T. & J. W. JOHNSON & CO.

1903.

T

DIGIS a

1903

COPYRIGHT, 1903,

PY

T. & J. W. JOHNSON & CO.

334121

12-3-59

SLH

In the preparation of the following Tables the effort has been made to present a methodical outline of the Rules of Evidence, as set forth in Stephen's Digest. Primarily they are designed for the use of students, but the busy practitioner may occasionally find it convenient to refer to them.

The general purpose of the accompanying notes is merely to make the Tables more nearly complete and readily intelligible. Where they depart from the text of the Digest, or extend beyond it, they are but suggestive; and the suggestions made are not fully discussed, nor the authorities in their support exhaustively cited.

The references, where not otherwise indicated, are to the Articles of Stephen's Digest of the Law of Evidence. The notes occasionally referred to, are those contained in the Second American Edition (from the sixth English edition) with annotations and references to American cases, by George Chase, LL.B.

TABLE OF CONTENTS.

IN THREE PARTS.

FIRST PART.—RELEVANCY.

RULES CONCERNING RELEVANCY	TABLE I—XXIII
Of Inclusion	I—VIII
<i>Applicable generally</i>	I—III
Any fact in issue	I
Facts relevant to any fact in issue	I
Res Gestae	II
Facts necessary to be known	III
<i>Applicable specifically</i>	IV—VIII
Where there is a question whether any act was done by any person	IV
Where a person's conduct is in issue, or is relevant	IV
Where the existence of a conspiracy is in issue, or is relevant	V
Where a right of or over property is in question	VI
Where the existence of any custom is in question	VII
Where the proceeding is a criminal case of rape	VIII
Of Exclusion	IX—XXIII
<i>Facts not connected with any fact in issue</i>	IX

	TABLE
<i>Hearsay</i>	X
{ Admissions	XI
{ Confessions	XII
{ Statements of persons since deceased . . .	XIII
{ Evidence previously given	XIV
{ Statements of Acts of State or of facts of a public nature	XV
{ Statements made for public reference. . .	XVI
{ Statements of general history or geography	XVII
{ Statements contained in a book of original entry	XVIII
{ Judgments	XIX
<i>Opinion</i>	XX
{ Of experts	XXI
{ Of others as to whether two persons are or are not married.	XXI
<i>Character</i>	XXII
{ Exceptions in criminal and in civil cases respectively	XXIII

SECOND PART—ON PROOF.

	TABLE
RULES CONCERNING PROOF	XXIV—XXXIV
{ Proof otherwise than by evidence	XXIV
{ <i>By judicial notice</i>	XXV
{ <i>By agreed admissions</i>	XXVI
{ Proof by evidence	XXIV
{ <i>By oral evidence</i>	XXVII
{ <i>By documentary evidence</i>	XXVIII
{ Proof of execution of documents	XXIX
{ Proof of contents of documents	XXX
{ Proof of contents of public documents . .	XXXI
{ Presumptions as to documents	XXXII
{ Of the exclusion of oral by documentary evidence	XXXIII
{ <i>By real evidence</i>	XXXIV

THIRD PART—PRODUCTION AND EFFECT OF EVIDENCE.

TABLE	
RULES CONCERNING THE PRODUCTION AND EFFECT OF EVIDENCE	XXXV—XLIII
{ The Burden of Proof	XXXV
{ <i>Affected by presumption</i>	XXXVI
<i>Affected by estoppel</i>	XXXVII
{ Persons not competent to testify	XXXVIII
{ Persons not compellable to testify	XXXIX
{ Persons not permitted to testify	XL
{ Taking oral evidence in Court or out of Court, upon oath, etc.	XLI
{ Examination of witnesses	XLII
{ New trial—when not granted for improper admission or rejection of evidence	XLIII

FIRST PART.

RELEVANCY,

TABLE I.

First Rule of Inclusion. [Applicable generally.] Art. 2.

EVIDENCE MAY BE GIVEN

- { Of any fact in issue.¹
- { Of any fact relevant to any fact in issue.²

¹If the issue be a triable one, evidence of the existence or non-existence of any fact in issue may always be given. "I know of no case in which a fact in issue, or relevant to an issue, which the Court is bound to try can be excluded merely because it would pain some one who is a stranger to the action." S. Dig., Note II.

²For definition of the word "relevant" see Art. 1. In this rule it is affirmed broadly that evidence may be given of any fact which is relevant. The Tables which follow relate to the relevancy or irrelevancy of particular facts.

The distinction indicated by Stephen, between facts which are relevant or irrelevant, and facts which are deemed to be the one or the other, will not be regarded in any of these Tables. What is deemed by the law is, in the study of the law, to be accepted as unquestionable. The proviso of Art. 2 really modifies the definition of relevancy (Art. 1); for any fact which is "too remote to be material"—which furnishes but a fanciful analogy or conjectural inference (1 Taylor Ev., Sec. 298-239), may, practically speaking, be said to be irrelevant.

TABLE II.

Second Rule of Inclusion. [Applicable generally.] Arts. 3, 8.

EVIDENCE MAY BE GIVEN

- Of facts which form part of the same transaction as the facts in issue.¹
- Of facts which form part of any fact which may be proved.²

¹The last paragraph of Art. 3 is omitted from this Table, because the decisions cited by Stephen, though they support its statement of the law, do not appear to be founded on the doctrine of *res gestæ*. *Jones v. Williams*, 2 M. & W., 326 (1837); *Doe v. Kemp*, 2 Bing. N. C., (29 Eng. C. L. 102), (1835). See Table IX, note 2.

²The first paragraph of Art. 8 is here brought into association with Art. 3, in order more fully to present the *res gestæ* rule. The principle, which Art. 3 applies only to facts in issue, is qualifiedly extended by that paragraph of Art. 8 to any act which may be proved; but it is thought that for the word "act" in Art. 8, the word "fact" may properly be substituted, and that the doctrine of *res gestæ* is applicable to evi-

dential facts as well as to those in issue although where the main fact is merely a provable one the admissibility of other facts as subsidiary to it is subject to special limitation. Art. 8 and Note V. It is requisite only that there shall be "some main fact or act, which is itself admissible in evidence." *Lund v. Tyngsborough*, 9 Cush., 44, (1851). "Where any facts are proper evidence upon an issue, all oral or written declarations which can explain such facts may be received in evidence." *Wright v. Doe*, 4 Bing. N. C., 548 (33 Eng. C. L., 852), (1838). "Declarations which are the immediate accompaniments of an act are admissible as part of the *res gestæ*." Wharton Ev., Sec. 262. See Note to Table III.

TABLE III.

Third Rule of Inclusion. [Applicable generally.] Art. 9.

EVIDENCE MAY BE GIVEN

Of facts which are necessary to be known and in so far as they are necessary to be known.¹

To introduce or explain any fact in issue or relevant to the issue.

To support or rebut an inference suggested by any such fact.

To establish the identity of any person or thing whose identity is in issue or is relevant.

To fix the time or place at which any fact in issue or relevant fact happened.

To show that any document produced is genuine or otherwise.

To show the relation of the parties by whom any fact in issue or relevant fact was transacted.

To show opportunity for the occurrence or transaction of any such fact.

To show the relevancy of other facts.

¹ Article 2 states the general proposition that "evidence may be given . . . of any fact relevant to any fact in issue." And in this Article (9) we have the more particular statement that facts which are necessary to be known for any of the pur-

poses enumerated in this Table are relevant. In like manner, Arts. 3 and 8 (Table II) specify that facts which form part of the same transaction as the facts in issue, or of a provable fact, are relevant.

TABLE IV.

Fourth Rule of Inclusion. [Applicable specifically.] Arts. 7, 8.¹

EVIDENCE MAY BE GIVEN

When there is a question whether any act was done by any person. Art. 7.

Of any fact which supplies a motive for such an act.

Of any fact which constitutes preparation for it.

Of any fact which shows subsequent conduct of such person apparently influenced by the doing of it.

Of any fact which shows any act done in consequence of the act by, or by authority of, such person.

When a person's conduct is in issue or is relevant to the issue. Art. 8.

Of any statements made in the presence and hearing of such person by which his conduct is likely to have been affected.

¹ The obvious similarity of "a question whether any act was done by any person" (Art. 7) to an issue as to "a person's con-

duct." (Art. 8—last paragraph) has suggested their joinder in this Table.

TABLE V.

Fifth Rule of Inclusion. [Applicable specifically.] Art. 4.

EVIDENCE MAY BE GIVEN

In cases in which the existence of a conspiracy is in issue or is provable

*Of everything said, done, or written by any one of several conspirators in the execution or furtherance of their common purpose as against each of them.*¹

¹But statements as to measures taken (i. e. narratives of things past) in the execution or furtherance of any such common purpose (not in effecting it, but in consequence of, or arising out of it, *R. v. Blake*, 6 Ad. & El., N. S., 137 (51 Eng. C. L.), (1844),) are not relevant as such against any

conspirators, except those by whom or in whose presence such statements are made. The judge must first be satisfied apart from such acts and statements, that there are *prima facie* grounds for believing in the existence of the conspiracy to which they relate. Art. 4.

TABLE VI.

Sixth Rule of Inclusion. [Applicable specifically.] Art. 5.

EVIDENCE MAY BE GIVEN

In cases in which the existence of any right of or over property is in question

{ *Of every fact which constitutes the title of the person claiming the right.*¹

{ *Of every fact which shows that he, or any person through whom he claims, was in possession.*²

{ *Of every fact which constitutes an exercise of the right, or which shows that its exercise was disputed; or which is inconsistent with its existence or renders its existence improbable.*²

¹Facts in issue. See Table I.

²Facts relevant to the issue. *Ibid.* They render probable the existence or the non-

existence, of the right the existence of which is alleged upon the one side and denied on the other. See definition of relevant. Art. 1.

TABLE VII.

Seventh Rule of Inclusion. [Applicable specifically.] Art. 6.

EVIDENCE MAY BE GIVEN

In cases in which the existence of any custom is in question

*Of every fact which shows how, in particular instances, the custom was understood and acted upon by the parties then interested.*¹

¹See Blackstone Com., Book I (Shars. burgh Ins. Co., 95 Pa. St., 348-356, Ed.), 79, note 21; and Adams v. Pitts- (1880).

TABLE VIII.

Eighth Rule of Inclusion. [Applicable specifically.] Art. 8.¹

EVIDENCE MAY BE GIVEN

In criminal cases of rape.

Of the conduct of the person against whom the offence is said to have been committed, and, in particular of the fact that soon after the offence, she made a complaint (but not the terms thereof ²) to persons to whom she would naturally complain. ³

¹Second paragraph.

²See, however, Note V., of Stephen's Appendix, and also the note of the American Editor on the second paragraph of Art. 8.

³And of her generally immoral character, etc. See Art. 134, and note 4 to Table XLII.

TABLE IX.

First Rule of Exclusion. Art. 10.

EVIDENCE MAY NOT BE GIVEN

Of a fact which renders the existence or non-existence of any fact in issue probable by reason of its general resemblance thereto, and not by reason of its being connected therewith in any of the ways specified in the rules of inclusion, except in cases where some permissible inference relevant to the issue may be drawn from such fact.^{1, 2}

¹The so-called exceptions to this rule are not fully presented in Articles 11, 12 and 13; but the principle upon which they all rest is here stated, and may be illustratively indicated thus: The rule "*Res inter alios acta*," etc., does not include any fact from which a material inference is permissible, as when there is a question

(a) Whether a person said or did something. The fact that he said or did something of the same sort on a different occasion, if it shows the existence on the occasion in question of any state of mind or of body or bodily feeling, the existence of which is in issue or is relevant. Art. 11.

(b) Whether an act was accidental or intentional. The fact that such act formed part of a series of similar circumstances, in each of which the person doing the act was concerned. Art. 12.

(c) Whether a particular act was done. The fact that a course of office or business existed according to which it naturally would have been done. Art. 13. [It is under this head that Taylor, in his work, on Evidence (Chap. 12, Secs. 709-

641), mentions that in the United States entries made by the party himself in his own shop books are, subject to well settled restrictions and conditions, received in evidence. We, however, deem it more exact to treat the admission of such entries as an exception to that part of Hearsay Rule which excludes statements contained in any book, etc., and accordingly, it has been classed as one of the exceptions to that rule, and is dealt with in Table XVIII.].

(d) Whether a particular person held a particular public office. The fact that he acted in that office. Art. 13.

(e) Whether one person acted as agent for another on a particular occasion. The fact that he so acted on other occasions. Art. 13.

²The decisions upon which the last paragraph of Art. 3 (See Table II. n. 1) is based, seem not to be founded on the doctrine of *res gestæ*, but upon the principle stated above (n. 1), that the rule presented in this Table does not exclude any fact from which a material inference is permissible.

TABLE X.

Second Rule of Exclusion. Art. 14.

EVIDENCE MAY NOT BE GIVEN

Of the fact that a statement was made by a person not called as a witness.¹

Of the fact that a statement is contained or recorded in any book, document, or record whatever, proof of which is not admissible on other grounds.²

¹The exceptions to this part of the Hearsay Rule are separately presented in Tables XI, XII, XIII and XIV.

²The exceptions to this part of the Hearsay Rule are separately presented in Tables XV, XVI, XVII, XVIII and XIX.

TABLE XI.

First Exception to Second Rule of Exclusion.¹ Arts. 15-20.

THE HEARSAY RULE DOES NOT EXCLUDE

Admissions² made on behalf of the real party to any proceeding.³

By any nominal party thereto.⁴

By any person who has a substantial interest in the event.⁵

By any person who is privy in law, in blood or in estate to any party to the proceeding.⁵

By any agent authorized to make them, either expressly or by the conduct of his principal.⁵

¹Table X.

²An admission is a statement, oral or written, suggesting any inference as to any fact in issue or relevant . . . to any such fact, made by or on behalf of any party to any proceeding; Art. 15.

³An admission made at any time by the real party himself is, of course, admissible, unless he is suing or sued in a representative character only, in which case the statement must have been made whilst he sustained that character. Art. 16. Statements by strangers to a proceeding are not relevant as against the parties; but see Art. 18. No admission is relevant in any civil action if made without prejudice or under duress. Art. 20.

⁴Where the assignee of a chose in action may and does sue in his own name, he is not affected by statements of the assignor made after assignment; and the rule in the United States seems to be generally the same even where the assignee is required to sue in the name of the assignor.

⁵If made during the continuance of the interest which entitles him to make it. Art. 16.

⁶Including partners and joint contractors, with respect to partnership transactions, or joint contracts; and lawyers in the actual management of their clients' causes. Art. 17. And also any person expressly referred to for information. Art. 19.

TABLE XII.

Second Exception to Second Rule of Exclusion.¹ Arts. 21-24.

THE HEARSAY RULE DOES NOT EXCLUDE

Confessions² made without inducement, threat or promise³ proceeding directly or indirectly from a person in authority, including

The prosecutor.

Officers of justice having the prisoner in custody.

Magistrates, and other persons in similar positions.

¹ Table X.

² A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime; Art. 21.

³ Having reference to the charge against the accused person, and giving him reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. A confession

made after the complete removal of the impression produced by any inducement, threat or promise is provable; and facts discovered in consequence of confessions improperly obtained, and so much of such confessions as distinctly relates to such facts, may be proved. Art. 22. As to confessions admissible though made upon oath, etc., see Art. 23; or though obtained by promise of secrecy, or by deception, etc., see Art. 24.

TABLE XIII.

Third Exception to Second Rule of Exclusion.¹ Arts. 25-31.

THE HEARSAY RULE DOES NOT EXCLUDE

Statements² written or verbal of facts in issue or relevant to the issue, if the person who made the statement³ is dead. Art. 25.

When the declaration was as to the cause of the declarant's death, or as to any of the circumstances of the transaction which resulted in his death.⁴ Art. 26.

When the declaration was made in the ordinary course of the declarant's business, or in the discharge of a professional duty.⁵ Art. 27.

When the declaration was opposed to the pecuniary or proprietary interest of the declarant.⁶ Art. 28.

When the declaration was as to the declarant's testamentary intentions, or as to the contents of his will.⁷ Art. 29.

When the declaration related to the existence of any public or general right or custom or matter of public or general interest.⁸ Art. 30.

When the declaration related to the existence of any relationship between persons, whether living or dead, or to the birth, marriage, or death of any person, by which such relationship was constituted, or to the time or place at which any such fact occurred, or to any fact immediately connected with its occurrence.⁹ Art. 31.

¹Table X.

²Hereafter called "declarations."

³Hereafter called the "declarant."

Such declarations may be contradicted, and

the credit of the declarant may be impeached or confirmed, in the manner stated in Art. 135.

⁴Only in trials for the murder or manslaughter of the declarant; and only when he is shown to have been in actual danger of death, and to have given up all hope of recovery at the time of making the declaration. Art. 26.

⁵Such declarations must have been made at or near the time when the matter stated occurred, and of the declarant's own knowledge; and are relevant in so far only as they relate to the matter which the declarant stated in the ordinary course of his business or duty. Art. 27.

⁶If the declarant had peculiar means of knowing the matter stated, and had no interest to misrepresent it. The whole of any said declaration, and of any other statement referred to in it, is relevant, although matters may be stated which were not against such interest; but statements not referred to in, or necessary to explain, such declarations, though made at the same time, or recorded in the same place, are not relevant. Art. 28. For special applications of this Article, see its paragraphs following the first. The final one but repeats, in negative form, that the interest of the declarant to which the declaration is opposed must be a pecuniary or proprietary one.

⁷In the following cases :

- (a) When his will has been lost, and there is a question as to what were its contents.
- (b) When the question is whether an existing will is genuine or was improperly obtained.
- (c) When the question is whether any and

which of more existing documents than one constitute his will. In all these cases it is immaterial whether the declarations were made before or after the making or loss of the will. Art. 29.

⁸Such declarations may be made in any form and manner. Art. 30. They must have been made before the question to which they are related had arisen, but they may have been made to prevent its arising. Art. 31. Declarations as to particular facts from which the existence of any such right or matter may be inferred are irrelevant. Art. 30. Declarations as to public rights are relevant whoever made them. As to general rights it must appear or be shown that the declarant had competent means of knowledge. A public right, and a general right or custom defined. Art. 30.

⁹Such declarations may express either the personal knowledge of the declarant, or information given to him by others, provided those others were themselves qualified to be declarants. They may be made in any form and in any document or upon any thing in which statements as to relationship are commonly made. Art. 31. Pedigree must be in issue. [But see *Insurance Co. v. Rosenagle*, 77 Pa., 507 (1875)]. The declarant must be legitimately related by blood [or marriage, *Taylor Ev.*, Sec. 635-571; *Ins. Co. v. Schwenck*, 94 U. S., 598 (1876)], to the person to whom the declaration relates, or to the husband or wife of such a person. Such declarations must have been made before the question to which they are related had arisen, but they may have been made to prevent its arising. Art. 31.

TABLE XIV.

Fourth Exception to Second Rule of Exclusion.¹ Art. 32.

THE HEARSAY RULE DOES NOT EXCLUDE

Evidence given by a witness in a previous proceeding, or in an earlier stage of the same proceeding.

When the witness is dead, or is mad, or is so ill that he will probably never be able to travel.

When he is kept out of the way by the adverse party.

When he is out of the jurisdiction of the Court.²

When he cannot be found.³

Provided, in all cases, that the person against whom the evidence is to be given had the right and opportunity to cross-examine the declarant when he was examined as a witness; and that the questions in issue were substantially the same in the first as in the second proceeding.

Provided, in civil cases, that the proceeding was between the same parties or their representatives in interest.

Provided, in criminal cases, that the same person is accused upon the same facts.

¹ Table X.

² In civil, but not, it seems, in criminal cases. Art. 32.

³ Perhaps in civil, but not in criminal cases. *Ibid.*

These notes (2 and 3) are in the words of Stephen, but, as is remarked

by his American Editor in a note to this article, there is much difference of decision by the courts of the several States upon the general subject of the disabilities, other than the death or insanity of the witness, which will admit his former testimony. See the cases there cited.

TABLE XV.

Fifth Exception to Second Rule of Exclusion.¹ Art. 33.

THE HEARSAY RULE DOES NOT EXCLUDE

Statements of any act of state or of any fact of a public nature which is in issue or relevant.

When made in a recital contained in a public statute.

When contained in any proclamation of the Executive.

When contained in State papers communicated by the Executive to the Legislature, or published under public authority.

When contained in legislative journals or resolutions²

¹ Table X.

² In adapting this article to American

law, the note of the Editor, which refers to Gr. Ev. 1, Sec. 491, and to several reported cases, has been followed.

TABLE XVI.

Sixth Exception to Second Rule of Exclusion.¹ Art. 34.

THE HEARSAY RULE DOES NOT EXCLUDE

Statements of facts in issue or relevant, made for the purpose of being referred to by the public.

When contained in any record, official book or register kept in the United States, or in any country subject to the jurisdiction thereof, or at sea, or in any of the States, or in any foreign country.²

Provided the entry thereof was made in proper time by a person in the discharge of a duty imposed upon him by the law of the place in which such record, book or register is kept.

¹Table X.

²The text of Stephen has been departed

from only for the purpose of adapting his statement of the law to this country.

TABLE XVII.

Seventh Exception to Second Rule of Exclusion.¹ Art. 35.

THE HEARSAY RULE DOES NOT EXCLUDE

Statements as to matters (a) of general history, or (b) of geography, in issue or relevant to the issue.

(a) *When made in accredited historical books*²

(b) *When made in maps or charts published for public sale.*³

¹ Table X.

² But statements in such works as to private rights or customs are irrelevant. Art. 35.

³ Only as to matters of public notoriety, and such as are usually represented in such maps or charts and likely to be accurately stated. *Ibid.*

TABLE XVIII.

Eighth Exception to Second Rule of Exclusion.¹ (Inserted.)

THE HEARSAY RULE DOES NOT EXCLUDE

Statements contained in a properly authenticated book of original entries.²

When they consist of entries of goods sold and delivered.³

When they consist of entries of work done³

¹Table X.

²See American Editor's note to Art. 27, and cases cited. The form or name of the book is immaterial, if it be in fact a book of original entry. *Hoover v. Gehr*, 62 Pa., 136 (1869); and entries promptly made from a blotter, from memorandum slips, or from a slate, are to be considered original, *Barker v. Haskell*, 9 Cush. 218 (1852). The authorities are not harmonious as to the time within which the entries must be made from the memorandum slips, etc. In *Forsythe v. Norcross*, 5 Watts, 432 (1836), entries were held inadmissible where it appeared that they had been transcribed from a slate, four, five or six days after they had been made; while, on the other hand, they have been held admissible where the transcribing was done

four weeks after they had been made on a slate; *Hall v. Glidden*, 39 Me., 445 (1855); *Redlich v. Bauerlee*, 98 Ills., 134 (1881).

³The entries must be made at or near the time, but not before, the delivery of the goods, or the doing of the work; *Laird v. Campbell*, 100 Pa., 165 (1882). They may have been made by the party himself in his own book, and are admissible, although he be living at the time of the trial. But when he is a competent witness the book is regarded as merely supplementary to his own testimony; *Nichols v. Haynes*, 78 Pa., 174 (1875). The amount for which such an entry is admissible must, it is said, be reasonable, but no precise limit has been established; *Corr v. Sellers*, 100 Pa., 169 (1882).

TABLE XIX.

Ninth Exception to Second Rule of Exclusion.¹ Arts. 39-47.

THE HEARSAY RULE DOES NOT EXCLUDE

Judgments² of the Courts of the United States, or of any of the States or Territories, or of the District of Columbia, or such of the judgments of Courts of foreign countries as can by law be enforced in this country, and so far as they can be enforced.³

They are conclusive proof

Of any state of things which they actually effect, when the existence of the state of things so effected is a fact in issue or is relevant.⁴ Art. 40.

Of facts directly in issue in the case in which the judgment was rendered, actually decided by the Court, and appearing from the judgment itself to be the ground on which it was based.⁵ Art. 41.

Of the facts on which the condemnation of a ship as prize is plainly stated upon the face of the sentence of the Court of Admiralty to have proceeded.⁶ Art. 42.

Of the facts stated in the judgment,⁷ when any action is brought against any person for anything done by him in a judicial capacity.⁸ Art. 45.

They are evidential.

If not pleaded by way of estoppel.⁹ Art. 43.

If the judgment is an admission.¹⁰ Art. 44.

If it relates to a matter of public or general interest so as to be a statement under Article 30. (See Table XIII.)¹⁰ Art. 44.

¹ Table X.

² "Judgment" here means any final judgment, order or decree, as to which the party against whom it is offered as evidence does not prove that the court which gave it had no jurisdiction, or that it has been reversed, or, if he is a stranger to it, that it was obtained by any fraud or collusion, to which neither he nor any person to whom he is privy was a party. Arts. 39 and 46.

³ In *Hilton v. Guyot*, 159 U. S., 113 (1895), the general subject of the effect to be given to judgments, domestic or foreign, was quite fully considered, and a number of questions pertaining thereto were elaborately discussed by the Supreme Court of the United States. The decision, however—the judgment there involved being a personal and executory one, rendered by a French Court—was made to turn upon the fact that the courts of France do not accord conclusive effect to judgments of the courts of this country; and it was held (four justices dissenting) that because of this lack of "reciprocity," a judgment of a French Court would not be given such effect in the United States. See also *Ritchie v. McMullen*, 159 U. S., 235 (1895).

⁴ As against all persons. Art. 40.

⁵ As against parties and privies. Art. 41. Stephen adds to this statement: "Unless evidence was admitted in the action in which the judgment was delivered which is excluded in the action in which that judgment is intended to be proved," citing *R. v. Hutchins*, L. R., 5 Q. B. D., 353 (1880) as a recent illustration of this principle; but *Hilton v. Guyot*, 159 U. S., 113, casts some doubt upon its acceptance, at least in all cases, by the courts of this country. In the opinion of the court in that case (p. 204) it was said: "It is next objected that in those courts one of the plaintiffs was permitted to testify not under oath, and was not subjected to cross-examination by the opposite party, and that the defendants were, therefore, deprived of safeguards which are by our law considered essential to secure honesty and to detect fraud in a witness; and also that documents and papers were admitted in evidence, with which the defendants

had no connection, and which would not be admissible under our system of jurisprudence. But it having been shown by the plaintiffs, and hardly denied by the defendants, that the practice followed and the method of examining witnesses were according to the laws of France, we are not prepared to hold that the fact that the procedure in these respects differed from that of our own courts is, of itself, a sufficient ground for impeaching the foreign judgment."

⁶ As against all persons. But statements contained in judgments other than those of courts of Admiralty condemning a ship as prize, as to the facts upon which the judgment is based are irrelevant as between strangers, or as between a party or privy and a stranger. Art. 42.

⁷ And the proceedings antecedent thereto. Art. 45.

⁸ Whether the facts therein stated are or are not necessary to give the defendant jurisdiction, if, assuming them to be true, they show that he had jurisdiction. Art. 45.

⁹ As between parties and privies, whenever any matter which was or might have been decided in the action in which it was given is in issue, or is relevant, in any subsequent proceeding. Art. 43. Stephen adds: "Such a judgment is conclusive proof of the facts which it decides or might have decided, *if* the party who gives evidence of it had no opportunity of pleading it as an estoppel;" but the American Editor correctly states that it is held in a number of the States of this country that a judgment is equally conclusive when given in evidence, as if pleaded, even though there was an opportunity to plead it; and to this effect, see *Southern Pac. R. R. v. U. S.*, 168 U. S., 1 (1897), at page 59.

¹⁰ Even as between strangers. But judgments are not relevant as rendering probable facts which may be inferred from their existence, but which they neither state nor decide, either as between strangers, or as between parties and privies in suits where the issue is different, or in favor of strangers against parties or privies. Art. 44.

TABLE XX.

Third Rule of Exclusion. Arts. 48-54.

EVIDENCE MAY NOT BE GIVEN

Of the fact that any person is of opinion that a fact in issue, or relevant, does or does not exist.¹ Art. 48.

¹This is the rule, but it is subject to several exceptions. Those mentioned by Stephen are connectedly presented in Table XXI and the notes thereto.

TABLE XXI.

Exceptions to Third Rule of Exclusion.¹ Arts. 49-54.

THE RULE THAT OPINION IS GENERALLY IRRELEVANT DOES NOT EXCLUDE

The opinions of persons specially skilled in any matter of science or art² as to which there is a point in question. Art. 49.

The facts that two persons—there being a question whether they are or are not married—cohabited and were treated by others as man and wife.³ Art. 53.

¹ Table XX.

² Such persons are called experts, and the opinions to which they testify are called expert testimony.

The judge in each instance decides whether the witness is entitled to be considered as an expert. His opinion as to the existence of the facts on which his opinion is to be given is irrelevant. Art. 49. But facts properly proved, though not otherwise relevant, if they support or are inconsistent with his opinion, are relevant. Art. 50. And the grounds on which the opinion of any living person (when relevant) is based are also relevant. Art. 54.

When there is a question as to a foreign law, the opinion of experts, who in their profession [or who, though not of the pro-

fession, are, by reason of special study or experience] acquainted with such law are the only admissible evidence thereof; but they may produce books of authority, etc. The words "science or art" as here used, include, indeed, all subjects on which a course of study or experience is necessary to the formation of an opinion, and amongst others the examination of handwriting. Art. 49. The opinion of any person (though not an expert) who is acquainted with the handwriting of the supposed writer of any document, that it was or was not written or signed by that person is relevant; and as to what is deemed sufficient to constitute acquaintance with the handwriting of another person, see Art 51. The law respecting the comparison of handwritings is, in Pennsylvania, established by

statute. Act of May 15, 1895, P. L. 69. In the Courts of the United States and of several of the States, where this has not been done, the rule differs in one or more particulars, from the English rule as stated by Stephen. In some of the States, however, the English rule is followed. Art. 52.

³ It is well settled that proof of cohabitation and of repute unitedly, do raise a presumption of marriage, except in prose-

cutions for bigamy, proceedings for divorce, actions of *crim. con.*, etc.; but, whilst Stephen has been followed in presenting this principle as an exception to the rule excluding opinions it is submitted that it is not the *opinion* of witnesses as to the existence of marriage, but their testimony to the *facts* of cohabitation and repute, which give rise to the presumption.

TABLE XXII.

Fourth Rule of Exclusion. Arts. 55-57.

EVIDENCE MAY NOT BE GIVEN

Of the fact that a person respecting whose conduct there is any inquiry, is of a particular character.¹ Art. 55.

¹The exceptions to this rule are connectedly presented in Table XXIII and the notes thereto

TABLE XXIII.

Exceptions to Fourth Rule of Exclusion.¹ Arts. 56, 57.

THE RULE THAT CHARACTER IS GENERALLY IRRELEVANT DOES NOT EXCLUDE

In criminal proceedings

The fact that the person accused has a good character.²

In civil cases (generally)

The fact that the character of any party to the action is such as to affect the amount of damages which he ought to receive.³

¹Table XXII.

²But the fact that he has a bad character is irrelevant, unless it is itself a fact in issue, or unless evidence has been given that he has a good character, in which case evidence that he has a bad character is admissible. The word "character," as here used, means reputation as distinguished from disposition, and evidence may be given only of general reputation—not of particular acts. Art. 56.

³In some civil, as well as criminal cases, the character (reputation) of a party is an

obviously material subject of inquiry, and where this is so, evidence thereof is, of course, admissible. In actions for seduction and the like, it has repeatedly been held that evidence of the woman's reputation for lack of chastity may be given; and in actions for defamation and for malicious prosecution, in which the injury for which redress is sought, is the reputation of the plaintiff, evidence of his bad reputation is, with manifest propriety, received in mitigation of damages. See notes to Art. 57.

SECOND PART.

ON PROOF,

TABLE XXIV.

First Rule Concerning Proof.¹ Arts. 58-92.

RELEVANT FACTS MAY BE PROVED

Otherwise than by evidence.

Judicial Notice. Arts. 58, 59.

Admissions agreed to at the hearing, or before the hearing and with reference thereto, or by the pleadings. Art. 60.

By evidence.

Oral Evidence. Arts. 61, 62.

Documentary Evidence. Arts. 63-92.

Real Evidence (added).

¹This rule, like the first rule of relevancy (Table I), is stated in general terms. It leaves for more particular statement the specific rules relating, especially, to each of the here indicated methods of proof. Accordingly, see "Judicial Notice," Table

XXV; "Admissions agreed to," etc., Table XXVI; "Oral Evidence," Table XXVII; "Documentary Evidence," Tables XXVIII-XXXIII; and "Real Evidence," Table XXXIV.

TABLE XXV.

Second Rule Concerning Proof. Arts. 58, 59.

RELEVANT FACTS MAY BE PROVED

By judicial notice ¹

Of matters relating to the governments of the United States and of the States respectively.

The public law of the United States or of any State whose law is applicable to the proceeding.²

The political constitution and seal of the United States and of the several States.³

The accession, status and, in some instances, the signatures of the principal officers of the United States and of the several States.⁴

The existence of Congress and of the State Legislatures, and the respective times and places of their sessions.⁴

The public Executive proclamations and messages, and the treaties of the United States.⁵

The days of general political elections.

Of matters relating to the particular court or to other courts.

The particular court's own seal, rules, records and officers, and the official status and signatures of those officers.

The existence of the other United States courts, the extent of their jurisdiction, their seals and their judges.⁶

The courts of last resort of the respective States.⁷

Of matters relating to foreign nations.

The Law of Nations.

The status of the United States with respect to foreign countries, as of war, peace, amnesty, etc.

The existence and title of every State and Sovereign recognized by the government of the United States, and its government, system of courts, etc.

The public seals of recognized foreign states when attached to public official documents, and the existence and seals of their admiralty and maritime courts.

Of matters of a general character.

The chief geographical facts and features of the United States and of the several States.⁸

The occurrence of things which must have occurred according to the ordinary course of nature.

The general customs observed in the transaction of business.

Matters of common knowledge and experience within their jurisdiction, or of such general and public notoriety that every one may be fairly presumed to know them.

Matters which any statute of the United States requires them to notice.⁹

¹ In adapting Articles 58 and 59 to the law of this country, the American notes have been generally followed. It would be difficult, if not impossible, to present a list of all things which should be judicially noticed. Those mentioned in this Table are amongst the more important. The

general principle upon which proof of certain facts is dispensed with is that they have been already authoritatively established, or that they are of such character that the Court's knowledge of them may properly be assumed, or are so notorious that everyone may fairly be supposed to

know them. This principle may readily be related to each of the several matters enumerated in this Table, and may be applied in determining, in each instance, what others might properly be added to the list. The Table has been prepared with especial reference to the Federal Courts; the modifications necessary to make it conform to the requirements of the State Courts, are noted below.

² The State Courts do not judicially notice the law of any other of the States.

³ The State Courts require proof of the constitution, as well as of the law, of the other States.

⁴ The State Courts require proof of these matters as respects the other States.

⁵ The State Courts judicially notice executive proclamations, etc., of the United States and of the particular State itself, but not of the other States.

⁶ The State Courts judicially notice the other Courts, etc., of the same State, and of the United States, but not of the other States.

⁷ Not applicable to State Courts. But all Appellate Courts will take judicial notice of the rules and methods of inferior Courts when rendering their judgments.

⁸ To adapt to State Courts, substitute for "and of the several States," the words, "and of the particular State."

⁹ To adapt to State Courts, substitute for the words "Statute of the United States," the words, "Statute of the State."

TABLE XXVI.

Third Rule Concerning Proof. Art. 60.

RELEVANT FACTS MAY BE PROVED

By admissions agreed to at the hearing, or before the hearing and with reference thereto, or by the pleadings.¹

¹The difference between such admissions (sometimes called judicial or solemn admissions) and those which, notwithstanding the hearsay rule, are provable, is that the admissions here referred to are conclu-

sive, whilst those dealt with in Table XI, are merely evidential. In a trial for felony, the prisoner can make no conclusive admission, though a confession (Table XII) may be proved against him. Art. 60.

TABLE XXVII.

Fourth Rule Concerning Proof. Art. 61, 62.

RELEVANT FACTS MAY BE PROVED

By oral evidence.¹

¹ All facts may be so proved, subject to the requirements of law as to proof of documents. (Tables XXVIII-XXXIII), Art. 61. Oral evidence must in all cases whatever be direct; that is to say, if it be of a fact alleged to have been perceived by any sense (*ex gr.* of sight or of hearing),

or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner. If it be of an opinion, or of the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. Art. 62.

TABLE XXVIII.

Fifth Rule Concerning Proof. Arts. 63-92.

RELEVANT FACTS MAY BE PROVED

By documentary evidence.¹

¹Several matters auxiliary to this rule, are separately presented as follows: Proof of the execution of documents, Table XXIX; Proof of the contents of documents, Table XXX; Proof of the contents

of public documents, Table XXXI; Presumptions as to documents, Table XXXII, and the parol evidence rule, Table XXXIII.

TABLE XXIX.

First Auxiliary of the Fifth Rule Concerning Proof.¹ Arts. 66-69.

THE EXECUTION OF DOCUMENTS MUST BE PROVED,

Where there is an attesting witness alive, sane and subject to process.³

By calling at least one such witness.^{4, 5, 6} Art. 66.

Where there is one or more attesting witnesses, but none who is alive and can be found.³

By proof of the signature of at least one such witness.^{4, 5, 7} Art. 66.

Where there is no attesting witness.³

By proof of the signature of the person who executed the document.
Art. 69.

¹Table XXVIII.

²This applies to all private documents. For methods of identification and proof of genuineness of Public Documents, see notes to Table XXXI.

³The distinction made by Stephen between documents required by law to be attested and documents not required by law to be attested, is based upon English statutory provisions which have not been generally enacted in this country, though similar statutes exist in some of the States, and where they do, they of course must be

followed. But by the common law which is still in force in most of the States, the manner of proving the execution of a document is made to depend upon the actual presence, or absence, of attestation, and not upon the existence or non-existence of any requirement of law upon the subject; and to this common law rule, the present Table conforms.

⁴But the person seeking to prove the execution of a document is not bound to call for that purpose either the party who executed it or any attesting witness, or to

prove the handwriting of any such party or attesting witness.

(1) When (but see American note) an admissible admission of its contents has been proved, Art. 64;

(2) When (but see American note) he is entitled to give secondary evidence of its contents because the original is shown or appears to be in the possession or power of the adverse party, who, after notice, does not produce it. (Table XXX);

(3) When his opponent produces it when called upon, and claims an interest under it in reference to the subject matter of the suit;

(4) When the person against whom the document is sought to be proved is a

public officer bound by law to procure its due execution, and who has dealt with it as a document duly executed;

(5) When the document is an "ancient" one (see Table XXXII) Art. 67.

⁵ For cases to which this rule extends, see Art. 66.

⁶ If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence. Art. 68.

⁷ Stephen adds (Art. 66): "And that the signature of the person executing the document is in the handwriting of that person," but generally in this country, this is not requisite.

TABLE XXX.

Second Auxiliary of the Fifth Rule Concerning Proof.¹ Arts. 63-65, 70-72.

THE CONTENTS OF DOCUMENTS² MAY BE PROVED

By primary evidence.³

The document itself. Art. 64.

Each part of a document which is executed in several parts. Art. 64.

Each counterpart of a document severally executed by one or some of the parties only.⁴ Art. 64.

Each of a number of documents all made by any process⁵ which secures uniformity in the copies.⁶ Art. 64.

By secondary evidence.²

Examined copies, exemplifications, office copies, and certified copies. Art. 70.

Other copies made from the original and proved to be correct. Art. 70.

Counterparts of documents as against the parties who did not execute them. Art. 70.

Oral accounts of the contents of a document given by some person who has himself seen it. Art. 70.

¹ Table XXVIII.

² For proof of contents of public documents, see Table XXXI.

³ The contents of documents *must* be proved by primary evidence, except in the following cases, where secondary evidence

may be given (Arts. 65, 71). When the original

- (a) is in the possession or power of the adverse party, who, after due notice (see below), does not produce it;
- (b) is in the possession or power of a stranger not legally bound to produce it, and who refuses to do so after service of subpoena, etc.;
- (c) has been destroyed or lost, and proper search has been made for it;
- (d) is of such a nature as not to be easily movable, or is in a country from which it is not permitted to be removed;
- (e) has been taken from the party by fraud, so that it cannot be procured;
- (f) consists of numerous documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection;
- (g) is a document for the proof of which special provision is made by statute;
- (h) is a public document. Art. 71.

In case (a) secondary evidence is not admissible, unless reasonably sufficient notice to produce the original has been given, except in the following cases: (1) When the document to be proved is itself a notice; (2) When the action is founded upon the assumption that the document is in the possession or power of the adverse party, and requires its production; (3) When it appears or is proved that the adverse party has secured possession of the original from a person subpoenaed to produce it; (4) When the adverse party or his agent has the original in court.

In case (b) a subpoena *duces tecum* must have been served; if a stranger who has

been so served, or who, after having been sworn as a witness, admits that the document is in court, refuses to produce it *without lawful justification*, secondary evidence may not be given. Arts. 71, 72. (See also, as to notice to produce, etc. Table XLII, note 1).

Case (e) is inserted by the American editor and authorities are cited by him in its support.

In case (f) evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents. Art. 71..

As to case (g) it is, of course, that where there is a statutory provision prescribing (or permitting) any special method of proving the contents of any document, such provision must (or may) be followed. Statutes of this kind are not uncommon; but they generally concern public documents (case h) and are more distinctly referred to in Table XXXI, which relates especially to public documents. In all cases, questions as to the existence of facts rendering secondary evidence admissible are to be decided by the judge, unless in deciding such a question the judge would in effect decide the matter in issue. Art. 71.

⁴ Each counterpart is primary evidence as against the parties executing it. Art. 64.

⁵ *E. g.* by printing, lithography, or photography. Art. 64.

⁶ Each is primary evidence of the contents of the rest; but where they are all copies of a common original, no one of them is primary evidence of the contents of the original. Art. 64.

TABLE XXXI.

Third Auxiliary of the Fifth Rule Concerning Proof.¹ Arts. 73-84.

THE CONTENTS OF PUBLIC DOCUMENTS MAY BE PROVED²

- { By production, from proper custody, and identification of the original.³ Art. 74.
- { By an examined copy.^{4, 6.} Art. 75.
- { By an exemplification.^{5, 6.} Art. 77.
- { By compliance with statutory provisions.^{6, 7.} Arts. 76, 79-82.

¹ Table XXVIII.

² Not strictly speaking, by secondary evidence as indicated in Art. 71 and in the note to table XXX, which follows that article, but in some one or other of the several substituted ways which are here stated.

³ This is really primary evidence: The contents of the document are proved by production of the original; though instead of accompanying its production, as in the case of a private document, with proof of execution, it is to be shown that it has come from proper custody, and must be identified as being what it professes to be. Art. 74. And whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and

no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible in proof of its contents, provided it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted. Art. 79.

⁴ An examined copy is a copy proved by oral evidence to have been examined with the original and to correspond therewith. Art. 75.

⁵ An exemplification is a copy of a record set out either under the Great Seal or under the Seal of a Court. It is equivalent to the original; and a copy made by an officer of the Court bound by law to make it, is an exemplification; but if such officer is authorized by a rule of court, but not required by law to make it, it is

regarded as equivalent to an exemplification only in the same cause and Court. Arts. 77, 78.

⁶ For mode of proof of foreign written laws, acts of state and judicial records, see Art. 84.

⁷ As already remarked in the note to Table XXX, where there is a statute

which prescribes (or permits) any particular method of proof, it must (or may) be followed. Several such statutes, State and Federal, are referred to in Arts. 76, 79-84; but it is not deemed desirable, and would scarcely be practicable to advert to them with any particularity here.

TABLE XXXII.

Fourth Auxiliary of the Fifth Rule Concerning Proof.¹ Arts. 85-89.

IT IS PRESUMED

When any document bearing a date has been proved

That the document was made on the day on which it bears date, and if more than one bear the same date, that they were executed in the order necessary to effect their intended object. ² Art. 85.

When any document is not produced after due notice and call

That the document had been duly stamped. ³ Art. 86.

When any document purporting to be a deed has been signed and has a seal upon it ⁵

That this is the seal of the party signing it. ⁴ Art. 87. ⁶

When any document purporting or proved to be thirty years old is produced from proper custody ⁷

That the handwriting of the signature and every other part of the document is genuine, and in the case of a document executed or attested, that it was duly executed and attested. Art. 88.

When any document produced appears to have been altered or interlined ⁸

That the alterations or interlineations, if the document is a deed, were made before the deed was completed. Art. 89. ⁹

(That the alterations or interlineations, if the document is a will were made after the execution of the will. ¹⁰ Art. 89.

¹Table XXVIII.

²But independent proof of the correctness of the date will be required if the circumstances are such that collusion as to the date might be practised, and would, if practised, injure any person, or defeat the object of any laws. Art. 85.

³Unless it be shown to have remained unstamped for some time after its execution. Art. 86.

⁴In a form recognized as valid by the law of a particular State; and in Pennsylvania and others of the States a scroll is all that is necessary; *Miller v. Binder*, 28 Pa. 439 (1857).

⁵And upon proof of the signatures it is presumed that the instrument was duly and regularly sealed, and, when found in the possession of the grantee, that it was delivered; *Pringle v. Pringle*, 59 Pa. 289 (1868); and also from due acknowledgment and recording delivery is presumed; *McCurdy's Appeal*, 65 Pa. 296 (1870) *Ingles v. Ingles*, 150 Pa. 397 (1892).

⁶It has been found necessary to depart from Stephen's statement of the rule in order to adapt this table to the law as it exists in this country.

⁷The judge decides whether or not documents are produced from proper custody, and they are said to be in proper custody if they are in the place in which, and under the care of the person with whom they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable. Art. 88.

⁸And in the absence of all evidence relating to such alterations or interlineations. No person producing any document

which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless the alteration was made before the completion of the document or with the consent of the party to be charged under it or his representative in interest.

An alteration is said to be material when, if it had been made with the consent of the party charged, it would have affected his interest or varied his obligations in any way whatever. An alteration which in no way affects the rights of the parties or the legal effect of the instrument is immaterial. The above rule extends to cases in which the alteration was made by a stranger, whilst the document was in the custody of the person producing it, but without his knowledge or leave. Art. 89.

There is no presumption as to the time when alterations or interlineations appearing on the face of writings not under seal were made, except that it is presumed that they were so made that the making would not constitute an offense. *Ibid*.

See in general the note of the American Editor to Art. 89.

⁹Stephen's rule cannot be fully accepted as law in this country. Thus when the alteration is beneficial to the party offering the instrument the burden is upon him to explain the alteration to the satisfaction of the jury; *Jordan v. Stewart*, 23 Pa. 248 ff. (1854); *Brady v. Berwind-White Co.*, 106 Fed. 824 (1901).

¹⁰But see *Wikoff's Appeal*, 15 Pa. 281 (1850). At page 290 Mr. Chief Justice Gibson says: "The presumption is that they [interlineations in a will] were made at or before the time when the will was prepared for the final act [execution]."

TABLE XXXIII.

Fifth Auxiliary of the Fifth Rule Concerning Proof.¹ Arts. 90-92.

WHEN ANY JUDGMENT OF ANY COURT OR ANY OTHER JUDICIAL OR OFFICIAL PROCEEDING, OR ANY CONTRACT OR GRANT, OR ANY OTHER DISPOSITION OF PROPERTY, HAS BEEN REDUCED TO THE FORM OF A DOCUMENT, NO EVIDENCE MAY BE GIVEN OF ANY SUCH JUDGMENT OR PROCEEDING, OR OF THE TERMS OF SUCH CONTRACT, GRANT, OR OTHER DISPOSITION OF PROPERTY, EXCEPT THE DOCUMENT ITSELF;² NOR MAY THE CONTENTS OF ANY SUCH DOCUMENT BE CONTRADICTED, ALTERED, ADDED TO, OR VARIED BY ORAL EVIDENCE.

But evidence may be given

For testing the validity of a document, or of any part of it, or to entitle to a judgment or decree relating to it

Of fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law.⁴ Art. 90.

For modification or evidence of a document

Of any separate oral agreement as to any matter on which the document is silent, and which is not inconsistent with its terms.⁵ Art. 90.

Of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property.⁶ Art. 90.

Of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property.⁷ Art. 90.

- 1 Of any usage or custom by which incidents not expressly mentioned in any contract are annexed to contracts of that description.⁸ Art. 90.

*For putting a construction upon a document*⁹

- 2 Of the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations, and of common words which from the context, appear to have been used in a peculiar sense.¹⁰ Art. 91.
- 3 Of the circumstances of the case.¹¹ Art. 91.
- 4 Of the circumstances of the author of the document and his habitual use of language or names for particular persons or things.¹² Art. 91.
- 5 Of statements made by any party to the document as to his intentions in reference to the matter to which the document relates.¹³ Art. 91.
- 6 Of facts to show that the document was in fact executed with its apparent intention.¹⁴

¹Table XXVIII.

²Or secondary evidence of its contents in cases in which secondary evidence is admissible (see Table XXX). Art. 90.

³Applies only to parties to documents, and their representatives in interest, and only to cases in which some civil right or civil liability depend upon the terms of a document are in question. Art. 92.

⁴Or any other matter which, if proved, would produce any effect upon the validity of the documents, or of any part of it, or which would entitle any person to any judgment, decree, or order relating thereto. Art. 90.

⁵If, from the circumstances of the case, the court infers that the parties did not intend the documents to be a complete and final statement of the whole of the transaction between them. Art. 90. And oral evidence of a transaction is not excluded by the fact that a documentary memorandum of it (not intended to have legal effect as a contract, etc.,) was made. *Ibid.* Nor is oral evidence of the existence of a legal relation, as distinguished from the terms thereof, excluded by the fact that it has been created by a document; and the fact that a person holds a public office need not be proved by the production of his written or

sealed appointment thereto, if he is shown to have acted on it. *Ibid.*

⁶In Pennsylvania, where the parol evidence rule has been less strictly applied than in England, and elsewhere in this country, it is held that a separate oral agreement constituting the inducement for entering into a written contract may be proved.

⁷Provided that such agreement is not invalid under the Statute of Frauds, or otherwise. Art. 90.

⁸Unless the annexing of such incident to such contract would be repugnant to or inconsistent with the express terms of the contract. Art. 90.

⁹Means ascertaining the meaning of the signs or words made upon it, and their relation to facts. Art. 91.

¹⁰But evidence may not be given to show that common words, the meaning of which is plain, and which do not appear from the context to have been used in a particular sense, were in fact so used; and if the words of a document are, on the other hand, so defective or ambiguous as to be unmeaning, no evidence can be given to show what the author of the document intended to say. Art. 91.

¹¹This is for the purpose of ascertaining the relation of the words of the document to facts (see note 9); and to this end every fact may be proved to which the document refers, or may probably have been intended to refer, or which identifies any person or thing mentioned in it. Art. 91. [See this article for application of the circumstances of the case to the construction of a docu-

ment having a proper legal meaning and also a less proper meaning; for the rule where a document has one distinct meaning in reference to the circumstances of the case; and for the course which may be pursued if the document applies in part but not with accuracy, or not completely to the circumstances of the case].

¹²These facts are admissible only where the document applies in part but not with accuracy, or not completely to the circumstances of the case (see note 11); and, even in such cases, no evidence can be given of statements made by the author as to his intentions in reference to the matter to which the document relates. (But see notes 13 and 14). Art. 91.

¹³Such statements are admissible only where the language of the document, though plain in itself, applies equally well to more objects than one, but in such cases evidence may be given both of the circumstances of the case (see note 11) and of such statements. Art. 91.

¹⁴If the document is of such a nature that the court will presume that it was executed with any other than its apparent intention. For instance, adopting Stephen's illustration, where A leaves two legacies of the same amount to B, assigning the same motive for each legacy, one being given in his will, the other in a codicil, the court presumes that they are not meant to be cumulative, but the legatee may show, either by proof of surrounding circumstances, or of declarations by the testator, that they were. Such proof is called evidence to rebut an equity.

TABLE XXXIV.

Sixth Rule Concerning Proof. (Added.)

RELEVANT FACTS MAY BE PROVED

By real evidence ¹

The persons of individuals, ² and things animate ³ or inanimate which have a material relation to the case. ⁴

The locus in quo. ⁵

Pictures of persons or of places, and maps or charts, made in such manner as to secure accuracy of representation. ⁶

¹ Real Evidence may be said to comprise any object the inspection whereof, either taken by itself, or in connection with other facts, proves or renders probable the past, present or future existence or non-existence of any relevant fact, and the term, no doubt, is inclusive of some objects which are not specifically enumerated in this table. See, in general, note of the American Editor to Art. 62.

² *Comm. v. Emmons*, 98 Mass. 6 (1867); *Indiana Car Co. vs. Parker*, 100 Ind. 181 (1884). Whether a person suing for personal injuries can be compelled by the court to submit his person to examination either by the jury or by physicians, is a question upon which the authorities are not agreed. Such power has been denied in *Pettit v. Brewer*, 8 W. N. C. 253

(1880) and in *Railway Co. v. Botsford*, 141 U. S. 250 (1891); on the other hand it has been held to exist in *Atchison, etc., R. R. Co. v. Thul*, 29 Kans. 466 (1883).

³ *Line v. Taylor*, 3 F. & F. 731 (1862): Ferocious dog brought into court to prove his disposition.

⁴ Ex. gr. The weapon or instrument used to commit a crime, bloody garments, etc. *Wynne v. State*, 56 Ga. 113 (1876); *People v. Fernandez*, 35 N. Y. 49 (1866).

⁵ May, in the discretion of the court be visited by the jury: *Vane v. Evanston*, 150 Ills. 616 (1894).

⁶ Ex. gr. Photographs, if properly verified, *Udderzook v. Comm.*, 76 Pa. 352 ff. (1874), sketches made by an artist who swears to their accuracy, *People v. Johnson*, 140 N. Y. 350 (1893), etc.

THIRD PART.

PRODUCTION AND EFFECT OF
EVIDENCE.

TABLE XXXV.

First Rule Concerning the Production and Effect of Evidence.¹
Arts. 93-97.

THE BURDEN OF PROOF LIES AT FIRST ON THAT PARTY AGAINST WHOM THE JUDGMENT OF THE COURT WOULD BE GIVEN IF NO EVIDENCE AT ALL WERE PRODUCED ON EITHER SIDE.² Art. 95.

But may be relieved or shifted

{ *By presumption*³

{ *By estoppel*⁴

¹ Under this head, viz. the Production and Effect of Evidence, Stephen treats of "Burden of Proof" (Arts. 93-97), of "Presumptions and Estoppels" (Arts. 98-105), of "The competency of witnesses" (Arts. 106-122), of "Taking oral evidence, and of the examination of witnesses" (Arts. 123-139), of "Depositions" (Arts. 140-142), and of "Improper admission and rejection of evidence" (Art. 143). These subjects are covered by Tables XXXV-XLII and the accompanying notes; but are there presented and dealt with in a manner somewhat different from that of the Digest.

² Whoever desires any court to give judgment as to any legal right or liability dependent on the existence or non-existence of facts which he asserts or denies to exist, must prove that those facts do or do not exist (Art. 93), unless as to any par-

ticular fact, it is provided by law that the burden of proving that fact shall lie on any particular person. Art. 96. If the commission of a crime is directly in issue in any proceeding, criminal or civil, it must be proved beyond a reasonable doubt. (As to civil cases see American Editor's note). The burden of proving that any person has been guilty of a crime or wrongful act is on the person who asserts it, whether the commission of such act is or is not directly in issue in the action. Art. 94. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. Art. 97.

³ See Table XXXVI, which is auxiliary to this one.

⁴ See Table XXXVII, which is auxiliary to this one.

TABLE XXXVI.

First Auxiliary of the First Rule Concerning the Production and Effect of Evidence.¹ Arts. 98-101.

THE BURDEN OF PROOF MAY BE RELIEVED OR SHIFTED:

By presumption

Of legitimacy from the fact that the person to whom the question relates was born during the continuance of a valid marriage between his mother and any man, or within a competent time thereafter.³ Art. 98.

Of death from the fact that the person to whom the question relates has not been heard of for seven years by those (if any) who if he had been alive would naturally have heard of him.⁴ Art. 99.

Of lawful origin of any proprietary right from the fact that a person has, for a long period of time, exercised it.⁵ Art. 100.

Of compliance with formal requisites for the validity of any judicial or official act where it is shown to have been done in a manner substantially regular. Art. 101.

Of the execution of every instrument which, to perfect the title of a person in possession of any property and entitled to the beneficial ownership thereof, it was the duty of his trustees to execute.⁶ Art. 101.

¹ Table XXXV. See also notes to Table XXXVII.

² A presumption which appears upon the pleadings may relieve the party on whom it would otherwise at first lie, of the bur-

den of proof (see Table XXXV), or as the proceeding goes on the party on whom it rested at first may prove facts which raise a presumption in his favor, and in such case the burden of proof is "shifted"

to the other party. In considering the amount of evidence necessary to shift the burden of proof, the court has regard to the opportunities of knowledge with respect to the fact to be proved which may be possessed by the parties respectively. Arts. 95, 96.

³ A competent time thereafter is within such a time after the dissolution of the marriage and before the celebration of another valid marriage, that his mother's husband could have been his father. The presumption is conclusive, unless it can be shown either that his mother and her husband had no access to each other when he could have been begotten, regard being had both to the date of the birth and to the physical condition of the husband, or that the circumstances of their access (if any) were such as to render it highly improbable that sexual intercourse took place. Art. 98. As to incompetency of the mother and the husband as witnesses, *etc.*, *Ibid.*

⁴ Unless the circumstances of the case are such as to account for his not being heard of without assuming his death. There is no presumption as to the time when he died, or as to the age at which a person died who is shown to have been alive at a given

time, or as to the order in which two or more persons died who are shown to have died in the same accident, shipwreck, or battle. Art. 99.

⁵ If it might have had a lawful origin by grant or license from the government, or from a private person, and its exercise might and naturally would have been prevented by the persons interested if it had not had a lawful origin. It is presumed that it was created by a proper instrument which has been lost. Art. 100.

⁶ It will be assumed that they have done what they should have done.

There are several presumptions in addition to those mentioned by Stephen, which may relieve from or shift the burden of proof. For instance, sanity is presumed, and the burden lies upon him who alleges insanity; but while there is some conflict of decision in the State Courts upon the question, the Supreme Court of the United States has recently held that in criminal cases the defendant is entitled to the benefit of a reasonable doubt of his sanity, produced by a proper consideration of all the evidence. *Davis v. United States*, 165 U. S., 373 (1897); 16 Sup. Court Rep., 353. For presumption of innocence, see Art. 94.

TABLE XXXVII.

Second Auxiliary of the First Rule Concerning the Production and Effect of Evidence.¹ Arts. 102-105.

THE BURDEN OF PROOF MAY BE RELIEVED OR SHIFTED

By estoppel²

Precluding any person, or his representative in interest, from denying³ the truth of anything which such person, by doing or saying, or abstaining from doing or saying, has intentionally caused or permitted another person to believe to be true, and to act upon such belief.⁴ Art. 102.

Precluding any person from denying that he acted in the manner in which another person has been led to believe he acted by a fraud of which the neglect of a legal duty⁵ owing by the person whose act is in question was in the natural course of things the proximate cause.⁶ Art. 102.

Precluding any tenant⁷ of any land or hereditament⁸ from denying that the landlord had⁹ a title thereto.¹⁰ Art. 103.

Precluding any acceptor of a bill of exchange from denying the signature of the drawer or his capacity to draw, or if the bill is payable to the order of the drawer, his capacity to endorse the bill,¹¹ or if the bill be drawn by procuration, the authority of the agent to draw in the name of the principal,¹² or if the bill is accepted in blank, that the drawer endorsed it. Art. 104.

Precluding any bailee, agent, or licensee from denying that the bailor, principal, or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted.¹³ Art. 105.

¹Table XXXV. See also notes to Table XXXVI.

²Presumptions may be either conclusive or disputable, but an estoppel is always conclusive. The party estopped is precluded from denying the existence of the fact to which the estoppel applies, and therefore when the circumstances giving rise to the estoppel are shown or appear, the existence of such fact is, in effect, conclusively established.

³In any suit or proceeding between either of them and such other person as is next referred to. Art. 102.

⁴Otherwise than he would have acted except for that belief. Art. 102.

⁵To exercise reasonable caution in the transaction of any business. *Ibid.*

⁶And when the person to whom the duty is owing alters his position for the worse because he is misled as to the conduct of the negligent person by the fraud. *Ibid.*

⁷And any person claiming through any tenant. Art. 103.

⁸Of which he has been let into possession, or for which he has paid rent, till he has given up possession. *Ibid.*

⁹At the time when the tenant was let into possession or paid the rent. *Ibid.*

¹⁰And no person who came upon any land by the license of the person in possession thereof, is, whilst he remains on it, permitted to deny that such person had a title to such possession at the time when such license was given. *Ibid.*

¹¹Though he may deny the fact of the endorsement. Art. 104.

¹²Though he may deny his authority to endorse it. *Ibid.*

¹³For what such bailee, agent or licensee may show, and as to the law of estoppel as related to bills of lading, see the last two paragraphs of Art. 105, and the notes thereto.

TABLE XXXVIII.

Second Rule Concerning the Production and Effect of Evidence. Arts. 106-109.

NO PERSON IS COMPETENT TO TESTIFY¹

Who is² prevented by extreme youth, disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth.³ Art. 107.

Who (in criminal cases) is the accused person or is the wife or husband of such person, or is a person, or the wife or husband of a person, jointly indicted with him. Art. 108.⁴

Who (in civil cases) is the lawful husband or wife of a party, or of a person whose interests are directly involved in the suit.⁵ Art. 109.

¹ The rule of the modern law is that all persons are competent to testify in all cases (Art. 106), and it seems to be the tendency of the courts liberally to apply this rule and to avoid a too ready allowance of the exceptions to it. The general subject of competency, compulsion and prohibition to testify, has been dealt with by Congress

and by many of the State Legislatures. For the Acts of Congress, see U. S. Rev. St. § 858; 20 U. S. St. at Large, 30; and as examples of State legislation, see the Pennsylvania Statutes, Acts of May 23, 1887, P. L. 158; June 11, 1891, P. L. 287; June 8, 1893, P. L. 344; June 18, 1895, P. L. 195; April 11, 1899, P. L. 41. Stephen

does not mention as disqualifying the fact that the witness does not believe in a future state of rewards and punishments, or has committed treason, felony, or the *crimen falsi*, but these disqualifications are still generally recognized in this country. See American note to Art. 107.

² In the opinion of the judge.

³ A witness unable to speak or hear is not incompetent, if he can give his evidence intelligently by writing, signs, or otherwise. Art. 107.

⁴ But in any criminal proceeding against a husband or wife for any bodily injury or violence inflicted upon his or her wife or husband, such wife or husband is competent and compellable to testify. Art. 108. And see statutory provisions referred to in note 1 to this Table.

When the only proof against a person charged with a criminal offence is the evidence of an accomplice, uncorroborated in any material particular, it is the duty of

the judge to warn the jury that it is unsafe to convict any person upon such evidence, though they have a legal right to do so. Art. 121.

If upon a trial for perjury the only evidence against the defendant is the oath of one witness contradicting the oath on which perjury is assigned, and if no circumstances are proved which corroborate such witness, the defendant is entitled to be acquitted. Art. 122. As to number of witnesses requisite in trials for treason, see the same article, and the Constitution of the United States, Art. 3. Sec. 3, and the similar provisions of the State Constitutions.

⁵ Even after dissolution of the marriage, neither party can testify as to facts learned through the confidence of the marital relation, but may as to other facts. Art. 109. See statutory provisions referred to in note 1 to this Table.

TABLE XXXIX.

Third Rule Concerning the Production and Effect of Evidence.
Arts. 110-113, 116, 120.

NO PERSON IS COMPELLABLE TO TESTIFY¹

- { As to any communication made to the witness by his or her wife or husband during the marriage.² Art. 110.
- { As to anything which came to the knowledge of the witness in court as a judge.³ Art. 111.
- { As to any affairs of State, or as to official communications between public officers upon public affairs, except with the permission of the officer at the head of the department concerned. Art. 112.
- { As to the names of persons by or to whom information was given as to the commission of offences.⁴ Art. 113.
- { As to any communication between the witness and his legal adviser.⁵ Art. 116.
- { As to any question put to the witness, the answer to which would ⁶ have a tendency to expose him or her (or his or her wife or husband) to any criminal charge, or to any penalty or forfeiture which the judge regards as reasonably likely to be preferred or sued for.⁷ Art. 120.

¹ See also Tables XXXVIII and XL.

² See statutory provisions referred to in note 1 to Table XXXVIII.

³ Doubtful. Art. 111. It seems that a lawyer cannot be compelled to testify as to what he said in court in his character of a lawyer. *Ibid.*

⁴ Applies to cases in which the government is immediately concerned. Art. 113. In ordering criminal prosecutions it is for the judge to decide whether the permission of any such question would or would not, under the circumstances of the particular case, be injurious to the administration of justice. *Ibid.*

⁵ Which his legal adviser could not disclose without his permission (Table XL). Art. 116.

⁶ In the opinion of the judge. Art. 120.

⁷ No witness who is not a party to a suit can be compelled to produce his title-deeds to any property, or any document the production of which might tend to criminate him, or expose him to any penalty or forfeiture; and no solicitor, trustee, or mortgagee can be compelled to produce (except for the purpose of identification) documents in his possession as such, which his client, *cestui que trust*, or mortgagor would be entitled to refuse to produce if they were in his possession; nor can any one who is entitled to refuse to produce a document, be compelled to give oral evidence of its contents. Arts. 118, 119.

TABLE XL.

Fourth Rule Concerning the Production and Effect of Evidence. Arts. 114, 115.

NO PERSON IS PERMITTED TO TESTIFY:

As to what passed between the jurymen in the discharge of their duties in any case in which the witness was a petty juror or a grand juror.² Art. 114.

As to any communication, oral or documentary, made to the witness as an attorney at law by or on behalf of his client, or as to any advice given by him to his client.³ Art. 115.

¹See also Tables XXXVIII and XXXIX.

²It is doubtful whether a grand juror may give evidence as to what any witness said when examined before the grand jury. Art. 114.

³The legal adviser is not permitted to make such disclosures either during or after the termination of his employment as such, unless with his client's express consent. The rule applies to communications made and advice given during, in the course, and for the purpose of his employment, whether in reference to any matter as to which a dispute has arisen or

otherwise; and it is immaterial whether the client is or is not a party to the action in which the question is put to the legal adviser. Art. 115. For a statement of communications and facts to which the rule does *not* extend, and of those whom the expression "legal adviser" includes, see the same Article. Medical men and (probably) clergymen may be compelled to disclose communications made to them in professional confidence. Art. 117. But as to physicians and surgeons, see statutory provisions referred to in note 1 to Table XXXVIII; e. g. the Pennsylvania Statute of June 18, 1895, P. L. 195.

TABLE XLI.

Fifth Rule Concerning the Production and Effect of Evidence. Arts. 123-125.

ALL ORAL EVIDENCE GIVEN IN ANY PROCEEDING MUST BE GIVEN UPON OATH OR SOLEMN AFFIRMATION,¹ AND MAY BE TAKEN

{ In open court upon a final or preliminary hearing.
Art. 125.

{ Out of court for future use in court. Art. 125.

{ *Upon affidavit.*² Art. 125.

{ *Under a commission.*^{3 5} Art. 125.

{ *Before any person appointed by the court or a judge, or selected by agreement of the parties.*^{4 5} Art. 125.

¹ Affirmation is permitted only when the witness is, from conscientious motives, unwilling to be sworn, and the judge is satisfied of the sincerity of his objection. Art. 123. Oaths are binding which are administered in such form and with such ceremonies as the person sworn declares to be binding. Every person now or hereafter having power by law or by consent of parties to hear, receive, and examine evidence, is empowered to administer an oath to all such witnesses as are lawfully called before him. Art. 124.

² Affidavits are received upon preliminary and ex parte applications in common law proceedings, e. g. upon a motion for the postponement of trial, for a rule to show cause, etc. In equity they are received upon similar applications, and on motions for interlocutory orders, e. g. for

an injunction pendente lite, etc. As to affidavits upon information and belief, etc. See Art. 125, and the American note thereto.

³ Oral evidence must be taken in the manner prescribed by the commission. Art. 125. See American note to Art. 125.

⁴ Oral evidence must be taken in the same manner as if it were taken in open court (Table XLII); but the person taking it has no right to decide on the validity of objections taken to particular questions [unless authorized, as in the case of a master in equity], but must record the questions, the fact that they were objected to, and the answers given. Art. 125.

⁵ As to the time for raising objections to a deposition or to evidence taken under a commission, see American note to Art. 125.

TABLE XLII.

Sixth Rule Concerning the Production and Effect of Evidence. Arts. 126-142.

WITNESSES EXAMINED IN OPEN COURT¹ MUST BE

First examined in chief.^{2, 3}

Then cross-examined.⁴

Then re-examined.^{3, 5}

¹The examination of witnesses out of court proceeds in the same order, and even where evidence is taken under a commission, the manner of taking it is, so far as practicable, generally the same as if it were taken in open court. See notes 3 and 4 to Table XLI.

As to a witness refreshing his memory by referring to a writing, see Art. 136; and as to the right of the adverse party to see any writing so used, and to cross-examine upon it, see Art. 137. As to the requirement that a party who calls for a document and, upon its production inspects it, must give it in evidence, see Art. 138; and that a party who refuses to produce a document on notice, may not afterwards use it as evidence without the consent of the other party, see Art. 139. As to statutory provisions relating to depositions, see Arts. 140-142.

²As to the right of the opposite party to cross-examine a witness who has been examined in chief, or has been intentionally

sworn or affirmed; as to recalling a witness for further examination or for further cross-examination; as to the effect of the death or incapacity of a witness at any stage of his examination; and as to the practice where in the course of a trial a witness who was supposed to be competent appears to be incompetent, see Art. 126, and the American notes.

³Leading questions, if objected to, must not be asked, except with the permission of the court. Art. 128.

⁴Leading questions may be put. Art. 128.

The cross-examination need not be confined to the facts to which the witness testified on his examination in chief. Art. 127. [But see American notes]. In addition to questions relating to facts in issue or relevant thereto, the witness, when under cross-examination, may be asked any questions which tend to test his accuracy, veracity, or credibility, or to shake his credit by injuring his character. Art. 129.

As to how far a witness may be compelled to answer such questions, see Art. 129, and notes, and as to questions tending to criminate, etc., see Table XXXIX. When a witness under cross-examination has answered any question which is relevant only in so far as it tends to shake his credit by injuring his character, no evidence can be given to contradict him, except where he denies or does not admit that he has been convicted of any felony or misdemeanor, or answers any question tending to show that he is not impartial, by denying the facts suggested. Art. 130. He may be asked whether he has made any former statement relative to the subject-matter of the action and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not distinctly admit that he has made such a statement, proof may be given that he did, in fact, make it. Art. 131. The same course may be taken with a witness under examination in chief,

if the judge is of opinion that he is adverse. *Ibid.* As to previous statements made by the witness in writing, or reduced into writing, see Art. 132; and as to impeaching the credit of a witness by the evidence of other persons who, from their knowledge of him, believe him to be unworthy of credit upon his oath, see Art. 133.

When a man is prosecuted for rape or an attempt to ravish (Table VIII), the woman may be asked whether she has had connection with other men, but her answer cannot be contradicted. She may also be asked whether she has had connection on other occasions with the prisoner, and if she denies it, she may be contradicted. Art. 134.

⁵ The re-examination must be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter. Art. 127.

TABLE XLIII.

Seventh Rule Concerning the Production and Effect of Evidence. Art. 143.

A NEW TRIAL WILL NOT BE GRANTED IN ANY CIVIL ACTION ¹
ON THE GROUND OF THE IMPROPER ADMISSION OR REJECTION OF EVIDENCE, UNLESS SOME SUBSTANTIAL WRONG OR MISCARRIAGE HAS BEEN THEREBY OCCASIONED IN THE TRIAL OF THE ACTION. ART. 143.

¹As to criminal cases, the English rule, as presented by Stephen, is different; but, as noticed by the American editor, "in this country, it is a general rule in criminal cases that a new trial will not be granted

for the erroneous admission or rejection of evidence, when it clearly appears that the defendant could not have been prejudiced thereby."

UC SOUTHERN REGIONAL LIBRARY FACILITY

A 000 684 365 0